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No. 76-325

In the Supreme Court of the United States

OCTOBER TERM, 1976

JAMES R. THORNTON AND EDWARD DAVIS,
ADMINISTRATORS, ETC., PETITIONERS

v.

DISTRICT OF COLUMBIA REDEVELOPMENT
LAND AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY IN OPPOSITION

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OPINIONS BELOW

The memorandum opinion of the court of appeals (Pet. App. A.3) is unreported. The memorandum and orders of the district court denying petitioners' motions to set aside the distribution of the condemnation award (Pet. App. A.4-A.6) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 8, 1976 (Pet. App. A.1-A.2). The petition for a writ of certiorari was filed on September 2, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court abused its discretion by denying petitioners' post-judgment motions to set aside its orders distributing a portion of a condemnation award.

RULES INVOLVED

Rules 60(b) and 71A, Fed. R. Civ. P., are set out in pertinent part at Pet. 8-11.

STATEMENT

1. On June 28, 1971, the District of Columbia Redevelopment Land Agency (DCRLA) filed a complaint in condemnation and a declaration of taking in the United States District Court for the District of Columbia, thereby acquiring title to certain real property in the District of Columbia, including a lot known as Parcel 515-103. A current title report, prepared for DCRLA by Lawyers Title Insurance Corporation, indicated that the Little Sisters of the Poor (Little Sisters) and the St. Joseph's Home and School (St. Joseph's) each held a one-quarter interest in the subject parcel. The report stated that the remaining one-half interest was held by heirs and devisees of

Joseph Foller and Katherine Rohleder (J.A. 58).[1] Because neither the title report nor local records disclosed the names and addresses of living Foller and Rohleder heirs and their successors, and because the subject parcel had been entirely neglected by the Foller and Rohleder heirs and their successors for many years, DCRLA served notice on those parties by publication in the District of Columbia newspapers pursuant to Rule 71A(d)(3), Fed. R. Civ. P. DCRLA did learn, however, that a local attorney, Michael Doyle, had remained in contact with certain Foller and Rohleder heirs; DCRLA made personal service upon Doyle, who accepted service for the Foller and Rohleder heirs (J.A. 60-61).

2. St. Joseph's and the Little Sisters thereafter filed petitions for payment of their share of the condemnation award (J.A. 9-12). No other person filed any pleading or appeared. On January 26, 1973, the district court held a hearing on the petitions for payment (J.A. 62-67). The parties stipulated (J.A. 64, 66) that the value of the taken parcel was $41,850 and that St. Joseph's and the Little Sisters were each entitled to a one-quarter share of the condemnation award ($10,462.50). Accordingly, the district court entered orders directing payment of the stipulated awards to St. Joseph's and the Little Sisters (J.A. 13-14). On February 8, 1973, the district court entered judgment determining just compensation to be

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[1] "J.A." refers to the joint appendix to petitioners' brief in the court of appeals, a copy of which is being lodged with the Clerk of this Court.

$41,800 and directed DCRLA to pay the full amount into the registry of the court (J.A. 15-16). Little Sisters and St. Joseph's were paid their determined shares and the balance of the award remained in the registry of the court until October 1975, when it was claimed by the successors to the Foller and Rohleder heirs and devisees.

3. On May 13, 1975, almost four years after initiation of the condemnation action and more than two years after final judgment, counsel for the administrators of the estates of Joseph Foller and Katherine Rohleder filed a motion requesting the district court to set aside its previous distribution orders and to direct St. Joseph's and Little Sisters to pay their shares of the award back into the court (J.A. 17-27). The motion alleged that the title report relied upon by DCRLA, St. Joseph's and the Little Sisters was erroneous and that the entire fee to Parcel 515-103 was held by the successors to the Foller and Rohleder heirs and devisees (J.A. 23). After an evidentiary hearing, the district court, on July 15, 1975, entered a memorandum and order denying the motion to set aside the distribution award (Pet. App. A.4-A.5). The district court found that DCRLA had given full and adequate notice by publication to all unknown owners and that many of the successors to the Foller and Rohleder heirs had received actual notice of the condemnation action. The district court then denied the motion to set aside the condemnation award, stating: "No basis exists for reopening a final judgment where movants had ample notice, slept on their rights

for more than a year and failed to present any evidence of extrinsic fraud" (Pet. App. A.5). The court noted, however, that if DCRLA had failed to make a reasonably diligent search of the records as required by Rule 71A(c)(2), Fed. R. Civ. P., then "a separate independent action for just compensation may lie against the United States in the Court of Claims" (Pet. App. A.5).

A second motion to set aside the awards to St. Joseph's and the Little Sisters was filed on September 2, 1975. The new motion differed from the previous one primarily because petitioners sued as trustees for the heirs and devisees of Joseph Foller and Katherine Rohleder rather than as administrators of the estates. The second motion alleged that DCRLA had neglected to properly notify the movants of the condemnation action and further alleged that DCRLA, St. Joseph's and the Little Sisters had "committed a fraud on the Court in that none of them performed a reasonably diligent search of the Land Records of the District of Columbia * * *" (J.A. 42). The district court denied the motion on October 1, 1975 (Pet. App. A.6).

Petitioners appealed both orders denying their motions to set aside distribution of the award. The court of appeals, finding that the district court had not abused its discretion, affirmed (Pet. App. A.3).[2]

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[2] The court specifically noted: "We express no opinion on whether appellants may press their claims in a suit under the Tucker Act * * *" (Pet. App. A.3).

ARGUMENT

Motions for relief from judgments or orders of federal courts are governed by Rule 60(b), Fed. R. Civ. P. Rule 60(b) motions are addressed to the sound discretion of the trial judge and will not be reversed absent a clear abuse of discretion. *Cline* v. *Hoogland*, 518 F.2d 776, 778 (C.A. 8); *Ag Pro, Inc.* v. *Sakraida*, 512 F.2d 141, 144 (C.A. 5); *Bibeau* v. *Northeast Airlines, Inc.*, 429 F.2d 212, 213 (C.A. D.C.). Petitioners fail to demonstrate any such abuse of discretion.

1. Petitioners contend (Pet. 26-31) that the judgment should have been set aside under Rule 60(b)(4) as void because DCRLA allegedly failed to give petitioners adequate notice of the condemnation action. The record in this case, however, clearly demonstrates that DCRLA served notice upon petitioners in full compliance with Rule 71A, Fed. R. Civ. P., and the requirements of due process. *Walker* v. *City of Hutchinson*, 352 U.S. 112; *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306.

In this case DCRLA served notice upon the unknown heirs and devisees of Katherine Rohleder and Joseph Foller by publication in District of Columbia newspapers.[3] The names and addresses of living successors to the heirs and devisees could not be readily ascertained because those parties had, for all practical purposes, abandoned the subject property many years before. Petitioners do not allege that any names and addresses of present alleged owners were recorded in the land records or tax rolls of the District of Columbia in conjunction with the subject parcel. Despite this lack of ready information, DCRLA nonetheless located and served an attorney who had once managed the property and who, in turn, gave actual notice of the condemnation action to many of the petitioners and to petitioners' present counsel. Even this actual notice did not prompt petitioners to appear. Thus, the notice provided by DCRLA was entirely adequate "with due regard for the practicalities and peculiarities of the case * * *." *Mullane* v. *Central Hanover Bank & Trust Co.*, *supra*, 339 U.S. at 314-315.

[3] Petitioners state (Pet. 22-23) that certain persons whose names were allegedly known to DCRLA as possible owners were not included by name in the published notice. However, petitioners in this action are the administrators for the estates of—and the trustees for the heirs and devisees of—Joseph Foller and Katherine Rohleder, who were named in the complaint.

2. Petitioners also contend (Pet. 31-35) that the judgment should be set aside because counsel for DCRLA, St. Joseph's and the Little Sisters allegedly committed a fraud upon the district court. Petitioners' allegations of misconduct, however, merely amount to a charge that counsel for DCRLA, Little Sisters and St. Joseph's were obligated to prove the validity of petitioners' questionable claims to full ownership of the subject tract although petitioners themselves took no advantage of their actual knowledge of the condemnation action and failed to appear. The courts below correctly rejected this argument; this showing hardly demonstrates a "fraud

upon the court" (Pet. 33). *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238.

The decisions below are plainly correct. The issue presented by this case, involving a unique set of facts, is of no general importance. There is no conflict among the circuits and thus no occasion for review by this Court.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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